

February 4, 2022

VIA ECF
The Honorable Michael J. Davis
Senior Judge, United States District Court
United States District Court, District of Minnesota
300 South Fourth Street
Minneapolis, MN 55415

Re: *United States ex rel. Laurie Simpson v. Bayer*, 08-cv-5758-MJD-ECW
Status Report

Dear Judge Davis:

We write with a status report on the resolution in principle reached in the above-referenced False Claims Act *qui tam* action transferred to the Baycol multi-district litigation proceeding in 2008 (the “Minnesota action”). The parties have made significant progress toward resolving this matter since the last update to the Court.

By way of background, Plaintiff-Relator Laurie Simpson has another *qui tam* action pending in the District of New Jersey captioned *United States ex rel. Laurie Simpson v. Bayer Pharmaceutical Corp., Bayer Corporation, and Bayer A.G.*, Case No. 05-cv-3895 (D.N.J.) (the “New Jersey action”). The New Jersey action does not involve Baycol, but involves two other drugs – Trasyolol and Avelox. The agreement would resolve both the Minnesota and New Jersey actions. While a combined resolution of the two cases is beneficial, it has taken some time to iron out the details given various complexities presented in the two cases.

The current status is as follows:

- A federal False Claims Act settlement agreement encompassing both the Minnesota and New Jersey actions has been drafted and is nearing finalization, with input provided by all parties;
- An agreement, subject to formal Department approval, on the relator’s share of the combined federal settlement amount from both actions has been reached between the United States and Plaintiff-Relator;
- The parties are working with a team from the National Association of Medicaid Fraud Control Units (“NAMFCU”) to handle the state portion of the settlement in the New Jersey action involving state Medicaid amounts. In the New Jersey action, Ms. Simpson brought claims on behalf of 21 states, as well as the United States. Those claims are being resolved alongside those of the federal

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government. The NAMFCU and Defendants have agreed on a protocol for doing so, and that process is moving forward on a parallel track.

- The proposed resolution will not resolve the issue of statutory attorneys' fees, costs, and expenses under the False Claims Act in either action. This issue was the subject of unsuccessful mediation. Plaintiff-Relator intends to file fee petitions in both matters; Bayer intends to contest those applications.
- The proposed resolution is subject to Department of Justice and Bayer Board approvals, which will be sought once the settlement agreement is finalized.

Pursuant to the federal settlement agreement, once Bayer makes the federal settlement payment, the parties will file a joint stipulation of dismissal of this action, reserving the issue of statutory attorneys' fees, costs, and expenses in both matters. While it is difficult to provide a firm date when that will occur, the parties hope to finalize the federal settlement agreement and obtain the necessary approvals by April 2022. If all goes as anticipated, we hope to file the joint stipulation of dismissal of this action by May 2022.

As the parties have worked to move this matter to completion, a question has arisen pertaining to the holdback provision in the MDL, and its applicability to the federal settlement amount in the Minnesota action. *See e.g.*, Pretrial Orders 25, 53, 166. The parties are discussing that issue, but may need to seek clarification from the Court in a separate filing.

The parties propose to provide a further update to the Court by April 1, 2022. Thank you for your consideration.

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